



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Ms. Leslie Lawler
Open Records Liaison
Elder Law and Public Health Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR95-1468

Dear Ms. Lawler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33672.

The Elder Law and Public Health Division of the Office of the Attorney General (the "OAG") received a request for, among other things, the documents obtained pursuant to civil investigative demands under the Deceptive Trade Practices-Consumer Protection Act regarding child safety and shopping carts.¹ You contend that the requested information is excepted from required public disclosure under section 552.101 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the documents are confidential pursuant to the Deceptive Trade Practices-Consumer Protection Act, subchapter E of the Business and Commerce Code.

Section 17.61 of the Business and Commerce Code provides:

¹Your brief to this office and the documents submitted for our review indicate that the OAG and the requestor have communicated with each other and agreed upon the scope of the requested documents. The OAG has notified the requestor what documents are available and the cost for copies. The only documents at issue are the documents obtained pursuant to the civil investigative demands.

(a) Whenever the consumer protection division believes that any person may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter, an authorized agent of the division may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying.

....

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the person who produced the material. . . .

The "[c]onsumer protection division" means the antitrust and consumer protection division of the attorney general's office." Bus. & Com. Code § 17.45(8). "Documentary material" includes the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated." *Id.* § 17.45(7).

Although you have copied the investigative demand letters for the requestor, you contend that the documents obtained pursuant to these demand letters are confidential. We agree. Accordingly, pursuant to section 17.61(f) of the Business and Commerce Code, the OAG must withhold the requested information from public disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

Ref: ID# 33672

cc: Mr. James A. Payne, Jr.
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